

**AMENDMENTS TO THE DRAWINGS:**

Attached is replacement drawings for FIGS. 8 and 11. The sheets containing FIG. 8 and 11 replace the original sheets. The replacement sheets for FIGS. 8 and 11 label the steps as S101, S102... etc. as suggested by the Examiner. Approval and entry of the changes to the Drawings is respectfully requested.

**REMARKS****Status Of The Claims**

Claims 1-9 have been amended. Claims 1-9 are pending and under consideration. Support for the amendments can be found in the Specification, for example, on page 14, lines 1-13. Applicants assert that no new matter has been added.

**Objection To The Drawings**

On page 2, item 1, the Office Action objected to Figures 8 and 11. Although the numbers used in Figures 8 and 11, were preceded with “#” as a distinguishing marker, applicants have submitted replacement figures labeling the steps as S101, S102... etc. as suggested by the Examiner. Approval of the drawings is respectfully requested.

**Rejections Under 35 U.S.C. 102(b)**

A. Claims 1, 8 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Tatsuhiko et al. (JP 2001-230970). This rejection is respectfully traversed.

Claim 1, as amended, for example recites:

an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range

(claim 1, lines 5-8).

In contrast, Tatsuhiko describes an image pickup method which sets *inter alia* the luminance using a catoptric light. In Tatsuhiko, these settings can be adjusted according to the distance measuring sensor. Tatsuhiko, however, fails to describe a controlling portion which takes an image of an object if it is determined to be *within* a range of distance. Tatsuhiko is only concerned with adjusting settings based on the distance; it does not describe using the distance as a condition for when to take an image. Accordingly, Tatsuhiko fails to disclose “an image taking control portion that controls so as to take an image of the object if it is determined... the object... is within a predetermined range” as recited by claim 1. Therefore, applicants assert that claim 1 patentably distinguishes over the cited art for at least the above-mentioned reasons.

Claims 8 and 9 recite “taking an image of the object if it is determined in said measuring that the distance between the object and the image taking device is within a predetermined range,” and therefore, patentably distinguish over the cited art.

B. Claim 2 was rejected under 35 U.S.C. 102(b) as being anticipated by Okino (U.S. 4,768,876). This rejection is respectfully traversed.

Claim 2 as amended recites:

an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range

(claim 2, lines 5-8).

In contrast, Okino describes an image sensing system including an image sensing device which converts an image into an electrical signal, and a control device which controls the gain of the electrical signal of the image sensing device according to the distance signal or illuminative power. Again, Okino merely describes setting the electrical gain based on the distance, but fails to describe using the distance as a condition for when to take an image. Accordingly, Okino fails to disclose "an image taking control portion that controls so as to take an image of the object if it is determined... the object... is within a predetermined range" as recited by claim 2. Therefore, applicants assert that claim 2 patentably distinguishes over the cited art for at least the above-mentioned reasons.

Accordingly, applicants respectfully request the rejection under 35 U.S.C. § 102(b) be withdrawn.

### Rejections Under 35 U.S.C. § 103(a)

#### A. Claim 3

1) Claim 3 (as depending from claim 1) was rejected under 35 U.S.C. § 103(a) as being unpatentable over Tatsuhiko et al. (JP 2001-230970) in view of Knopp et al. (US 5,870,167) and in further view of Nonaka (US 5,373,343); and 2) claim 3 (as depending from claim 2) was rejected under 35 U.S.C. § 103(a) as being unpatentable over Okino (US 4,768,876) in view of Knopp et al. (US 5,870,167) and in further view of Nonaka (US 5,373,343). These rejections are respectfully traversed.

Applicants assert that Knopp nor Nonaka, individually or combined, cure the deficiencies of Tatsuhiko and Okino as described above. Accordingly, claim 3 inherits the patentable recitation of its respective base claims, and therefore, patentably distinguish over the cited art for at least the reasons discussed with respect to the respective independent claims.

In addition, claim 3 includes additional features not disclosed by the cited art. For example, claim 3, recites:

a posture determining portion that **determines** whether or not the subject surface of the **object is perpendicular** to an axis along a shooting direction of the image taking device; and an image taking control portion that further controls so as to **taking an image of the object if it is determined by the posture determining portion that the subject surface of the object is perpendicular** to an axis along the shooting direction of the image taking device

(claim 3, lines 1-6, emphasis added).

On page 5, the Office Action concedes that Tatsuhiko fails to disclose the above recited features. On page 6, lines 1-7, however, the Office Action, asserts that Knopp cures this deficiency. This assertion is respectfully traversed.

Knopp describes an apparatus for capturing images of the anterior structure of an eye. As shown in Figure 3 of Knopp, the apparatus is arranged such that a camera and slit lamp are fixed relative to each other in a single plane. As shown in Figure 3, the angle of the image capture device relative to the sight line axis **23** of the eye is always fixed. The image capture device then rotates about the sight line axis **23** of Figure 3 (see col. lines 19-21). The cross sections of the images captured during the rotation all intersect at point **C** of Figure 3 (see col. 10, lines 25-28). Accordingly, in Knopp, the image capture device is always set at predetermined point and merely rotated about the axis along what would equate to the "shooting direction." Because the eye and image capture device are in a *fixed position*, Knopp does not contemplate nor is it necessary to have any measuring or determining means for determining whether the eye is perpendicular to the image capture apparatus. Accordingly, Knopp does not describe "a posture **determining portion that determines whether...** the object is perpendicular to an axis along a shooting direction" as recited by claim 3 (emphasis added).

Moreover, the Office Action cites Knopp column 7, lines 9-12 as allegedly disclosing "determin[ing] whether... the object is perpendicular to an axis along a shooting direction" as recited in claim 3. This assertion is respectfully traversed. Upon closer review, it is clear that the relevant cite merely describes an alignment determining assembly which is used to determine a line of sight for a given eye. In other words, the "determining" described in Knopp is merely determining the line of sight from the eye, and not whether the eye itself is perpendicular relative to the image capture device. The only movement in Knopp is the rotation of the apparatus about axis **23**. In addition, the claims of Knopp (to which the Office Action also cites) recites, for example in claim 1, lines 5-6, "capturing an image of said eye aligned at a predetermined angle" (emphasis added). Therefore, as described above, it is not necessary to "determine" whether the object is perpendicular because as shown, the angle is predetermined. Therefore, the cited portions along with the remaining disclosure of Knopp fails to disclose the feature of "determines whether... the object is perpendicular" as recited by claim 3.

In addition, applicants assert that Nonaka fails to cure the deficiencies of Knopp described above. Accordingly, applicants assert that claim 3 patentably distinguishes over the cited art for at least the above-mentioned reasons.

B. Claim 4

1) Claim 4 (as depending from claim 3 which depends on claim 1) was rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsuhiko et al. (JP 2001-230970) in view of Knopp et al. (U 5,870,167), in further view of Nonaka (US 5,373,343), and in further view of Musgrave et al (US 6,377,699B1); and 2) claim 4 (as depending from claim 3 which depends on claim 2) was rejected under 35 U.S.C. § 103(a) as being anticipated over Okino (US 4,768,876) in view of Knopp et al. (US 5,870,167), in further view of Nonaka (US 5,373,343), and in further view of Musgrave et al. (US 6,377,699 B1). These rejections are respectfully traversed.

Applicants assert that Musgrave fails to cure the deficiencies of Knopp described above.

Accordingly, applicants assert that claim 4 patentably distinguishes over the cited art for at least the reasons discussed with respect to claims 1, 2 and 3, in addition to the additional features recited therein.

C. Claim 5

1) Claim 5 (as depending from claim 1) was rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsuhiko et al. (JP 2001-230970) in view of Hideaki (JP 08-279954); and 2) claim 5 (as depending from claim 2) was rejected under 35 U.S.C. 103(a) as being unpatentable over Okino (US 4,768,876) in view of Hideaki (JP 08-279954). These rejections are respectfully traversed.

Applicants assert that Hideaki fails cure the deficiencies of Tatsuhiko and Okino as described above. Accordingly, claim 5 inherits the patentable recitations of its respective base claims, and therefore, patentably distinguishes over the cited art for at least the reasons discussed with respect to the respective independent claims.

In addition, claim 5 includes additional features not disclosed by the cited art. For example, claim 5, recites:

**a still determining portion** that determines whether or not the object is still in **accordance with the measurement result** of the measuring portion that is obtained at an interval of a predetermined time

(lines 1-3, emphasis added).

The Office Action cites Hideaki as disclosing the above recited feature. This assertion is respectfully traversed.

Hideaki describes an image capture device with a means for focusing on a subject while determining if the subject is stationary (see abstract). The detecting means in Hideaki, however, does not determine whether the subject is stationary based on a *measurement result*. For example, Hideaki recites that the motion detecting element 17, detects a motion within the

photographic frame by memorizing the picture signal when a subject enters the frame and computes a motion vector (see paragraph [0023]). In other words, the motion is detecting by comparing movements detecting in the picture signal to those already captured in a memory since the subject appeared in the photographic frame. Because Hideaki uses the picture signal in memory to determine movement, Hideaki does not describe nor is it necessary to use a “measurement result” of a “measuring portion.” Accordingly, Hideaki fails to disclose “determin[ing] whether or not the object is still **in accordance with the measurement result of the measuring portion**” as recited by claim 5.

Accordingly, applicants assert that claim 5 patentably distinguishes over the cited art for at least the above-mentioned reasons.

#### D. Claim 6

1) Claim 6 (as depending from claim 1) was rejected under 35 U.S.C. § 103(a) as being unpatentable over Tatsuhiko et al., (JP 2001-23090) in view of Hiroshi et al. (JP 2000-36032); and 2) claim 6 (as depending from claim 2) was rejected under 35 U.S.C. § 103(a) as being unpatentable over Okino (US 4,768,876) in view of Hiroshi et al. (JP 2000-36032). These rejections are respectfully traversed.

Applicants assert that Hiroshi fails to cure the deficiencies of Tatsuhiko and Okino as described above. Accordingly, claim 6 inherits the patentable recitations of its respective base claims, and therefore, patentably distinguishes over the cited art for at least the reasons discussed with respect to the respective independent claims.

In addition, claim 6 includes additional features not disclosed by the cited art. For example, claim 6 recites:

a background storage portion that stores a background...and an extracting portion that extracts an image that includes only the object by comparing the background image with an image obtained by taking an image of the object, wherein the image taking control portion controls so as to take an image when the distance is not measured by the measuring portion that obtains the background image

(lines 1-6, emphasis added).

The Office Action cites Hiroshi as disclosing the above recited features. This assertion is respectfully traversed.

Hiroshi describes extracting a foreground picture by deleting a background from a picture. Hiroshi, however, fails to describe “wherein the image taking control portion controls so as to take an image *when the distance is not measured by the measuring portion* for obtaining the background image” as recited by claim 6 (emphasis added).

Accordingly, applicants assert that claim 6 patentably distinguishes over the cited art for at least the above-mentioned reasons.

E. Claim 7

Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (US 4,699,149) in view of Tatsuhiko et al. (JP 2001-230970). This rejection is respectfully traversed.

Claim 7, as amended recites:

an image taking control portion that controls so as to take an image of the blood vessel pattern of a body if it is determined by the measuring portion that the distance between the body and the image taking device is within a predetermined range

(claim 7, lines 6-9).

Applicants assert that neither Rice nor Tatsuhiko, individually or combined, disclose "an image taking control portion that controls so as to take an image of the blood vessel pattern of a body if it is determined... that the distance between the body and the image taking device is within a predetermined range" as recited by claim 7.

Accordingly, applicants assert that claim 7 patentably distinguishes over the cited art for at least the above-mentioned reasons.

Therefore, applicants respectfully request the rejection under 35 U.S.C. § 102(b) be withdrawn.

**Conclusion**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

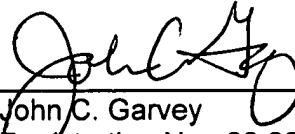
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 2-6-08

By:   
John C. Garvey  
Registration No. 28,607

1201 New York Avenue, N.W., 7th Floor  
Washington, D.C. 20005  
Telephone: (202) 434-1500  
Facsimile: (202) 434-1501